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Lippman Vows to Correct State's Failure to Provide Attorneys for Indigent Defendants at Arraignment

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ALBANY - Chief Judge Jonathan Lippman said yesterday that the state is in a position to correct a "longstanding failure" by assuring that within the next year most criminal defendants will be represented by legal counsel at arraignment.

In his annual Law Day address, Judge Lippman said the newly formed Indigent Legal Services (ILS) office will coordinate available counsel to be present for poor defendants' initial court appearances.

Read Judge Lippman's full remarks.

Judge Lippman said there is an "independent and compelling moral obligation" by those in the criminal justice system to find policy solutions to the problem of unrepresented defendants during arraignments. The U.S. Supreme Court's landmark ruling in *Gideon v. Wainwright*, 372 U.S. 335 (1963), mandated that attorneys be supplied to defendants who are too poor to pay for them.

"In the weeks and months ahead, the ILS office, working cooperatively with the policy-making branches of state government, the counties, the State Magistrates Association, and all affected stakeholders will make this issue its absolute top priority and work to develop and implement legislative, rule making and other practical solutions to facilitate the availability of counsel at first court appearance," the judge told judges, legislators and attorneys gathered at the Court of Appeals for Law Day.

Read the Law Journal's Law Day Special Report.

The annual Law Day observance honors the U.S. legal system and the rule of law. It was originally conceived during the Cold War era as a counterpoint to May Day celebrations in Communist countries.

Judge Lippman said yesterday's ceremony was especially fitting, as most Americans were still digesting the news of the killing of Osama bin Laden. The judge said the "destruction of evil

brings us full circle" from the agonies suffered by New York and the rest of the nation on Sept. 11, 2001.

On the arraignment issue, Judge Lippman said that providing criminal defendants around the state with counsel will take time.

"The problem may not be totally solved in one day, one month, or even one year, but it is my pledge to you today that by next Law Day, the norm in our great state will be that defendants are represented by counsel at arraignment, and that anything less than that will be aberrational in nature," Judge Lippman said.

Having defendants without counsel appear at arraignments in which they can be jailed indefinitely if they cannot afford bail is "a fundamental failure that can no longer be tolerated in a modern, principled society governed by the rule of law," he said.

Judge Lippman is chairman of a nine-member board that oversees Indigent Legal Services, which was created last year by the governor and lawmakers to standardize the way criminal legal services are provided to poor defendants in New York ([NYLJ, June 29, 2010](#)).

The most recent state budget appropriates \$77 million for criminal legal services. New York City and the state's other 57 counties provide the bulk of the funding, about \$260 million, for the system.

Critics say poor criminal defendants in some counties have adequate counsel while those in other counties get substandard representation from overworked or under-trained attorneys.

William Leahy, the executive director of Indigent Legal Services, said yesterday the board has discretion to provide \$26 million in grants. He said it will look for providers who propose methods of appointing arraignment counsel, enhancing lawyer standards, improving investigatory resources and show innovation that will result in better representation.

"The goal is to listen, support and encourage, not to impose new mandates on localities, but rather to move forward together with a common purpose and unswerving commitment shared by all stakeholders," Judge Lippman said yesterday in his address.

Mr. Leahy, a former Massachusetts defender coordinator, said it is time for the state to make good on its duty to provide all defendants with representation as established by *Gideon*.

Mr. Leahy noted that New York was misidentified in a U.S. Supreme Court ruling, *Rothgery v. Gillespie County*, 554 U.S. 191 (2008), as being among the states that provided indigent defendants with counsel at first arraignment.

"Frankly, New York didn't deserve the honor that the Supreme Court gave it in 2008," Mr. Leahy said. "It doesn't guarantee counsel at first court appearance in far too many cases."

Mr. Leahy said that since his appointment to the Indigent Legal Services post in February, he has seen that defendants without counsel are rarely arraigned in courts in municipalities or suburbs, but the representation problem is more prevalent in town and village courts in rural areas.

Neither Judge Lippman nor Mr. Leahy had an estimate for how often unrepresented criminal defendants appear at arraignments.

Judge Lippman wrote for the majority in a 4-3 ruling by the Court of Appeals in Hurrell-Harring v. State of New York, 15 NY3d 8 (2010), which reinstated a suit brought by the New York Civil Liberties Union on behalf of poor defendants who contended they were denied legal representation at crucial points in their cases, including arraignments (NYLJ, May 7, 2010).

The Court sent the matter back to the Appellate Division, Third Department, for further consideration.

Stephen P. Younger, president of the New York State Bar Association, said in his Law Day remarks that the legal industry that emerges from the recession has to be smarter, more forward-looking and more humane to its lawyers than the one buffeted by economic difficulties of the past few years.

"Technology is driving all legal service providers to deliver quality services more efficiently," said Mr. Younger, of Patterson, Belknap, Webb & Tyler. "And, technology is forcing us to re-think how we train new lawyers and how we structure our business models."

New York's attorney general, Eric Schneiderman, did not appear at yesterday's Law Day ceremony. Judge Lippman said Mr. Schneiderman was with his ailing father, Irwin, a lawyer who is retired from Cahill Gordon & Reindel.